

**URBNSURF – EXCLUSION OF LIABILITY, ASSUMPTION OF RISK,
WAIVER OF CLAIMS AND INDEMNIFICATION (the “WAIVER”).**

PLEASE READ THIS DOCUMENT CAREFULLY. BY SIGNING IT, YOU ARE GIVING UP LEGAL RIGHTS

I DOB: hereby agree as follows:

1 DEFINITIONS:

- (a) *“Built Environment”* means the landscaped and open environment at the URBNSURF Premises including all structures, buildings, equipment, machinery and associated property.
- (b) *“Claim”* means any present or future, actual or contingent, claim, cause of action, complaint, liability, demand, verdict, judgment, cost or expense arising either at law or in equity or under any statute that any person or entity has or might have.
- (c) *“includes”* means “including but not limited to”.
- (d) *“Loss”* means loss (including direct losses and consequential or indirect losses) awards, damages (including punitive, exemplary, special and incidental damages), expenses (including legal expenses) and penalties.
- (e) *“personal injury”* includes physical or mental injury to a person (including the aggravation, acceleration or recurrence of such an injury of the individual) or the contraction, aggravation or acceleration of disease of a person.
- (f) *“Recreational Activities”* means a sporting activity or a similar leisure time pursuit or any other activity that involves physical exertion or physical risk undertaken at the URBNSURF Premises, including but not limited to, surfing, bodyboarding, longboarding, stand-up paddle boarding, bodysurfing, swimming, wading, wave pool access, Skating Activities, carveboarding, jumping, running, sliding, climbing, use of hire or personal equipment (including surfboards, skateboards, surf hardware, skate hardware, wetsuits and surfing accessories, protective equipment and accessories, as well as playground equipment), any other activities involving physical activity or involving physical risk.
- (g) *“Skating Activities”* means a sporting activity or a similar leisure time pursuit or other activity that involves physical exertion or physical risk undertaken at the URBNSURF Premises, including but not limited to, skateboarding, inline skating, scooter riding, wheelchair skating, BMX riding, use of hire or personal equipment (including skateboards, skate hardware, protective equipment and accessories) and other similar activities with wheeled apparatus involving physical activity or physical risk.
- (h) *“URBNSURF”* means both URBNSURF Melbourne Pty Ltd ABN 30 617 135 298 and URBNSURF Sydney Pty Ltd ABN 94 671 761 112 and includes all Related Body Corporates (as defined in the Corporations Act 2001), together with all agents, licensees, employees, officers and contractors engaged by URBNSURF.
- (i) *“URBNSURF Facilities”* means the man-made surf park and Built Environment and skate park located at the URBNSURF Premises, including all associated or related facilities (including, without limitation, the surfing lagoon and surrounding aquatic

facilities, skate induction area, skate ramp(s), food and beverage premises, retail premises, surf rental premises and surf training and fitness academy).

- (j) “*URBNSURF Premises*” means both the URBNSURF Melbourne and Sydney surf parks, located at 309 Melrose Drive, Tullamarine VIC 3043 and P5 (Pod B, Hill Road, Sydney Olympic Park, NSW 2127.
- (k) “*Waiver*” means this document.

2 RISK WARNING (GENERAL – ALL URBNSURF PREMISES):

I ACKNOWLEDGE, UNDERSTAND AND AGREE THAT THE RECREATIONAL ACTIVITIES, ATTENDING THE URBNSURF PREMISES AND USING THE URBNSURF FACILITIES, INCLUDING BUT NOT LIMITED TO, THE MAN-MADE SURF PARK, SKATE PARK AND BUILT ENVIRONMENT, CAN BE DANGEROUS AND INVOLVE THE REAL RISK OF PERSONAL INJURY, INCLUDING THE POSSIBILITY OF SERIOUS INJURIES, PERMANENT DISABILITY, DISEASE, AND DEATH.

Those risks may include, but are not limited to, the following:

1. breaking waves, breaking waves in shallow water, water flow, currents and undertow; water quality, filtration and processing; fluid or substance consumption; drowning; entanglement; impacts with the Built Environment, other guests and hire or personal equipment; collisions with the Built Environment, other guests and hire or personal equipment, shoreline and waves; slips, trips and falls; weather conditions; exposure to the elements; use of hire or personal equipment (including boards, surf hardware, wetsuits and surfing accessories, skateboards, skate hardware, protective equipment and accessories); sustaining surfer’s myelopathy; the contraction, aggravation or acceleration of a disease or other condition that may be harmful to an individual or community (including, but not limited to, COVID-19); and
2. as specific to the skate park and/or participation in Skating Activities,
 - a) collision between multiple participants or participants and obstacles, skating activities equipment, including skate ramp(s), spectators and/or URBNSURF employees or agents;
 - b) falling off any equipment or the built environment, including skate ramp(s);
 - c) Skating Activities equipment can break or malfunction, even when being used as intended;
 - d) impacts, including being struck or hit, by equipment in use or being used by other participants;
 - e) incorrect landing or falling, including while attempting manoeuvres and/or tricks and falling off the course, skate ramp(s), and/or obstacles in the skate park;
 - f) Skating Activities injuries that may occur simply because of the nature of the activity engaged in;
 - g) negligence by other participants, resulting in injury to another, or others;
 - h) the failure of equipment, obstacles, skate ramp(s) and/or the built environment, including equipment loaned/hired to participants by URBNSURF;
 - i) notwithstanding the above, accidents with other participants, spectators, obstacles, skate ramp(s) and/or equipment.

I acknowledge, understand and agree that the description of the risks listed above is not complete, that participating in Recreational Activities is dangerous, includes other risks, and that URBNSURF has made no representations to me in relation to a risk or as to the safety or adequacy of Recreational Activities, the URBNSURF Premises or the URBNSURF Facilities.

I acknowledge, understand and agree that participation in the Recreational Activities involve the risks outlined in this Waiver, despite URBNSURF taking all reasonable care, and such risks constitute "inherent risk" for the purposes of the relevant legislation, including for the purposes of section 5I of the *Civil Liability Act 2002* (NSW) and section 55 of the *Wrongs Act 1958* (VIC).

I acknowledge and understand that I have also considered and accept any further risks which may arise due to any health condition(s) I have, including pregnancy.

I acknowledge, understand and agree that any equipment supplied by me may break or malfunction as a result of any of the risks listed above, or even if used as intended, and acknowledge that no representations have been made to me in relation to the suitability of the URBNSURF Premises or the URBNSURF Facilities for undertaking Recreational Activities using the equipment I have supplied.

I understand that weather conditions can be extreme and, as a consequence, I undertake to ensure that I will wear suitable clothing, wetsuits and protective safety gear and use protective equipment and accessories, and acknowledge that no representations have been made to me by URBNSURF as to the suitability of weather conditions, or the time of day, to the Recreational Activities and/or attending the URBNSURF Premises and/or using the URBNSURF Facilities.

2A ADDITIONAL RISK WARNING (NSW)

IN ADDITION TO THE MATTERS OUTLINED IN SECTION 2 ABOVE ("RISK WARNING (GENERAL – ALL URBNSURF PREMISES)"), IN RESPECT OF URBNSURF SYDNEY, I FURTHER ACKNOWLEDGE, UNDERSTAND AND AGREE THAT:

- (a) **THE RECREATIONAL ACTIVITIES PROVIDED BY URBNSURF ARE ENGAGED IN FOR THE PURPOSE OF SPORT, ENJOYMENT, RELAXATION AND/OR LEISURE AND CONSTITUTE A "RECREATIONAL ACTIVITY" FOR THE PURPOSES OF THE RELEVANT LEGISLATION, INCLUDING THE FOR THE PURPOSE OF SECTION 5K OF THE *CIVIL LIABILITY ACT 2002* (NSW).**
- (b) **THE RECREATIONAL ACTIVITIES, ATTENDING THE URBNSURF PREMISES AND USING THE URBNSURF FACILITIES, INCLUDING BUT NOT LIMITED TO, THE MAN-MADE SURF PARK, SKATE PARK AND BUILT ENVIRONMENT, CAN BE "DANGEROUS RECREATIONAL ACTIVITIES" WITHIN THE MEANING OF SECTION 5L OF THE *CIVIL LIABILITY ACT 2002* (NSW) AND INVOLVE THE REAL RISK OF PERSONAL INJURY, INCLUDING THE POSSIBILITY OF SERIOUS INJURIES, PERMANENT DISABILITY, DISEASE, AND DEATH.**

- 3 ASSUMPTION OF LIABILITY:** By participating in Recreational Activities, attending the URBNSURF Premises and/or using the URBNSURF Facilities, I understand the nature of and voluntarily choose to, and expressly assume any and all responsibility, liability, risks and dangers in participating in Recreational Activities, attending the URBNSURF Premises and/or using the URBNSURF Facilities, whether or not described above, known or unknown, inherent or otherwise.

I acknowledge and understand that, despite the risks, I freely and voluntarily participate in the Recreational Activities at my own risk.

I acknowledge that URBNSURF encourages all guests to hold current health, travel (as applicable) and/or personal accident and injury policies of insurance with a reputable insurer which provides cover for any property damage, personal injuries, disabilities or death, loss of future income, future medical expenses, or for any other consequential loss suffered as a result of any injuries, disabilities or death sustained as a consequence of participating in Recreational Activities, attending the URBNSURF Premises and/or using the URBNSURF Facilities.

- 4** **CODE OF CONDUCT:** I undertake to participate in Recreational Activities, attend the URBNSURF Premises and/or use the URBNSURF Facilities in a safe and controlled manner, within any designated areas, and am responsible for my actions and for the actions of those under my care and/or control.

I undertake that, in participating in Recreational Activities, attending the URBNSURF Premises and/or using the URBNSURF Facilities, I will observe and follow all signs at the URBNSURF Premises, comply with URBNSURF's terms and conditions including the general conditions of entry ("**Terms and Conditions**"), and follow all directions and instructions provided to me by URBNSURF (including with respect to social-distancing requirements, hygiene, health practices and other COVID-19 related measures). I acknowledge and agree that it is my responsibility to observe and follow these directions and instructions and URBNSURF will not be liable should I fail to do so.

- 5** **PHYSICAL CONDITION AND FITNESS:** I certify that I have completed the "pre-waiver" questionnaire, the answers I have provided are true and correct as of the date of this Waiver, and that I will disclose to URBNSURF any changes to the answers provided as soon as reasonably practicable.

I undertake that I will not, prior to or while participating in Recreational Activities, consume alcohol, use illicit or non-prescription drugs, or consume or use any substances that could impair my physical or mental capability to undertake Recreational Activities, and agree that such consumption or use will enable URBNSURF in its sole discretion to exclude me from the URBNSURF Premises with no entitlement to any refund or money paid for entry to the URBNSURF Premises, use of the URBNSURF Facilities or participation in Recreational Activities.

If I consume alcohol, use illicit or non-prescription drugs, or consume or use any substances that could impair my physical or mental capability to undertake Recreational Activities, I assume and accept all risks, dangers and hazards that may result from this including the possibility of serious injury, permanent disability, death and property damage and will indemnify URBNSURF from any and all liability for any damage to property or personal injury to any third party resulting from my participation in the Recreational Activities while, during or after such consumption or use.

I warrant that I have independently assessed the Recreational Activities, and I am, and continue to be, medically and physically fit and able to undertake Recreational Activities, and have not been advised otherwise by a medical practitioner. I have not and will not rely on any representation from URBNSURF that my physical and/or mental condition is sufficient to participate in Recreational Activities.

I warrant that I do not have any possibly relevant pre-existing medical, physical or mental conditions, and these have not been disclosed to URBNSURF. I acknowledge that I have an ongoing obligation to disclose any relevant changes in my medical, physical or mental conditions to URBNSURF during or prior to each attendance at the URBNSURF Premises, use of the URBNSURF Facilities, or participation in Recreational Activities.

I warrant that, if I have disclosed a possibly relevant pre-existing medical, physical or mental condition, I have obtained clearance from a qualified medical practitioner that approves my attendance at the URBNSURF Premises, use of the URBNSURF Facilities and participation in Recreational Activities.

- 6 SURF-SKATE SAFETY VIDEO:** I acknowledge and agree that I have watched the Surf-skate safety video and will abide by the rules and instructions at all times while attending the skate park and/or participating in Skating Activities.
- 7 EQUIPMENT AND FACILITIES INSPECTION:** I undertake to independently inspect equipment, as supplied by me or loaned/hired at URBNSURF, before I participate in any Recreational Activities and/or use of the URBNSURF Facilities.
- I undertake to immediately advise URBNSURF of any unsafe condition that I have observed.
- I undertake not to participate in the Recreational Activities and/or use the URBNSURF Facilities unless and until I am satisfied upon my independent inspection that there are no unsafe conditions present.
- I undertake that I will supply or hire and wear protective equipment and accessories at all times while participating in the Recreational Activities, attending the URBNSURF Premises and/or using the URBNSURF Facilities, in accordance with all signs at the URBNSURF Premises, the Terms and Conditions and the directions and instructions provided to me by URBNSURF.
- I understand and agree that I will wear a suitable helmet, enclosed shoes, t-shirt and shorts at all times while in the skate park and/or participating in Skating Activities.
- I understand that URBNSURF strongly advises the use of additional protective equipment, including wrist guards and elbow and knee pads, while in the skate park and/or participating in Skating Activities.
- I acknowledge and accept that all URBNSURF's precautions and services are reasonable, provided in good faith and are not a guarantee of safety, including: helmet safety checks are conducted visually, and URBNSURF does not directly supervise skating activities, and supervision may be partial or absent at times.
- I understand that any equipment supplied by me may break or malfunction as a result of use in the URBNSURF environment.
- 8 MEDICAL TREATMENT:** I consent to receiving any medical treatment (including first aid and CPR) that URBNSURF considers reasonably necessary during or after the Recreational Activities while at the URBNSURF Premises.
- 9 EXCLUSION OF LIABILITY:** I acknowledge and agree that to the maximum extent permitted by law, URBNSURF expressly disclaims all liability for any Loss or damage to property, personal injury (including the contraction, aggravation or acceleration of a disease or other condition that may be harmful to an individual or community such as, but not limited to, COVID-19) or death caused by or arising from my participation in the Recreational Activities and all associated activities at the URBNSURF Premises (including attendance at the facilities, use of the URBNSURF Facilities, playground equipment, lagoon-side hot tubs and gym and/or fitness training equipment) whatsoever and howsoever arising.
- 10 RELEASE AND INDEMNITY:** I hereby release and discharge URBNSURF from all Claims that I may hereafter have for any loss or damage to property, personal injury (including the contraction, aggravation or acceleration of a disease or other condition that may be harmful to an individual or community such as, but not limited to, COVID-19) or death resulting from or in connection with my participation in the Recreational Activities and all associated activities at the URBNSURF Premises (including attendance at the facilities, use of the URBNSURF Facilities, playground equipment, lagoon-side hot tubs and gym and/or fitness training equipment) whatsoever and howsoever arising.
- I indemnify and agree to keep URBNSURF indemnified from all Loss that I may suffer arising fully or in part as a result of participation in and or in connection with the Recreational Activities and all associated activities at the URBNSURF Premises (including attendance at the facilities, use of the URBNSURF Facilities, playground equipment, lagoon-side hot tubs

and gym and/or fitness training equipment) whatsoever and howsoever arising. This release and indemnity continues forever and binds my heirs, executors, personal representatives and assigns.

I agree and permit URBNSURF to rely upon this document in any future claims, Court proceedings or other disputes.

WARNING UNDER THE AUSTRALIAN CONSUMER LAW AND FAIR TRADING ACT 2012

If you sign this form, you will be agreeing that your rights to sue the supplier under the **Australian Consumer Law and Fair Trading Act 2012** are excluded, restricted or modified in the way set out in this form, if you are killed or injured because the services provided were not in accordance with the statutory guarantees outlined below.

Under the Australian Consumer Law (Victoria), several statutory guarantees apply to the supply of certain goods and services. These guarantees mean that the supplier named on this form is required to ensure that the recreational services it supplies to you –

- are rendered with due care and skill; and
- are reasonably fit for any purpose which you, either expressly or by implication, make known to the supplier; and
- might reasonably be expected to achieve any result you have made known to the supplier.

In accordance with section 22 of the **Australian Consumer Law and Fair Trading Act 2012**, the exclusion of these statutory guarantees is brought to your attention by this form.

NOTE: The change to your rights, as set out in this form, does not apply if your death or injury is due to gross negligence on the supplier's part. **Gross negligence**, in relation to an act or omission, means doing the act or omitting to do an act with reckless disregard, with or without consciousness, for the consequences of the act or omission. See regulation 5 of the Australian Consumer Law and Fair Trading Regulations 2022 and section 22(3)(b) of the **Australian Consumer Law and Fair Trading Act 2012**.

The following declaration must be completed by all participants.

DECLARATION BY PARTICIPANT (OVER 18)

I have read the above, been given the opportunity to ask questions, considered its effects, understand its contents, and agree to the terms as stated above for the purposes of all URBNSURF Premises and the laws which apply in each respective State.

The information I have provided to URBNSURF both in this document and elsewhere is true and correct and I acknowledge that URBNSURF is entitled to rely on the information or representations provided by or on behalf of me, including in respect of any discharge of liability.

By signing this form, I agree that my rights to sue URBNSURF (including, in relation to activities conducted in the State of New South Wales, under s 5N of the *Civil Liability Act 2002* (NSW) or otherwise) are excluded, restricted or modified in the ways outlined in this form, including because the services have not been provided in accordance with any express or implied warranty that the services will be rendered with reasonable care and skill.

Participant Signature

PARTICIPANT UNDER 18 YEARS OF AGE OR WHO LACKS THE CAPACITY TO UNDERSTAND THIS WAIVER (DUE TO A PHYSICAL, MENTAL OR OTHER DISABILITY)

NOTE: Where a participant is under 18 years of age and/or who lacks the capacity to understand this Waiver (due to a physical, mental or other disability) this form must also be signed by the participant's parent or legal guardian on their behalf.

I as the parent or legal guardian of
(Participant) have read and reviewed the above terms and agree to accept all terms on behalf of the Participant in my capacity as parent or legal guardian of the Participant, for the purposes of all URBNSURF Premises and the laws which apply in each respective State.

I agree to indemnify and keep indemnified URBNSURF with respect to all Loss suffered by URBNSURF in relation to the Participant participating in the Recreational Activities or with respect to any Claim brought against URBNSURF by any person (including the person signing this document) in relation to, whether fully or in part, the participation of the Participant in any Recreational Activities at URBNSURF, whatsoever and howsoever arising.

By signing the Waiver, I represent and warrant that I am either the parent or legal guardian of the Participant and that the information I have provided to URBNSURF both in this document and elsewhere is true and correct. I acknowledge that URBNSURF is entitled to rely on the information or representations provided by or on behalf of me, including in respect of any discharge of liability.

By signing this form, I agree that my and the Participant's rights to sue URBNSURF (including, in relation to activities conducted in the state of New South Wales, under s 5N of the *Civil Liability Act 2002* (NSW) or otherwise) are excluded, restricted or modified in the ways outlined in this form, including because the services have not been provided in accordance with any express or implied warranty that the services will be rendered with reasonable care and skill.

Parent / Legal Guardian Signature.....